

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Applicant respectfully submits that the disclosure of Applicant's application provides support for the amendments to the claims. For example at least Figures 1a-8 provide support for the amendments to claim 1.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-13 are now pending in this application.

Priority

Applicant respectfully requests that the Office acknowledge Applicant's claim for foreign priority in the next Office communication, such as by checking all of the boxes on the Office Action Summary sheet under "Priority under 35 U.S.C. § 119." Applicant notes that some but not all of these boxes were checked on the Office Action Summary sheet for the Office Action dated October 3, 2008.

Rejection under 35 U.S.C. § 102

Claims 1-7 and 13 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 4,872,578 to Fuerschbach *et al.* (hereafter "Fuerschbach"). This rejection is respectfully traversed.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). See generally M.P.E.P. § 2131.

Fuerschbach discloses a plate type heat exchanger 10 that includes a plurality of heat exchange plates 12, 12'. See Fuerschbach at col. 2, lines 8-11. A bottom plate 46 includes a pair of oval depressions 48 and four circular depressions 50, with the bottom plate 46 being positioned beneath a bottom or first heat exchange plate 12 and annular base portions 18 of depressions 16 of the plate 12 being positioned upon upper surfaces of the bottom plate depressions 48. See Fuerschbach at col. 4, lines 29-32, 55-59.

However, Fuerschbach does not disclose a heat exchanger having a plate-type design comprising, among other things, at least two adjacent heat exchanger plates, wherein the at least two adjacent heat exchanger plates are arranged in a stack, and a base plate, wherein the base plate is provided at one end of the stack, wherein the base plate comprises a depression with a contour having a shape that is the same shape as an outer edge of a bottom surface of one of the heat exchanger plates, as recited in claim 1.

For instance, Fuerschbach does not disclose or suggest that the depressions 48 of the bottom plate 46 have a contour with a shape that is the same shape as an outer edge of a bottom surface of the heat exchange plate 12, as recited in claim 1.

As shown in Figure 1 of Fuerschbach, the depression 48 of the bottom plate has a contour with a shape that is not the same shape as an outer edge of a bottom surface of the heat exchange plate 12. For instance, the depression 48 has a contour formed by a single, long oval while the plate 12 has two circular depressions 16 of annular base portions 18 that are much different in shape from the depression 48 of the bottom plate 46. Such circular depressions 16 and annular base portions 18 do not have a bottom surface with an outer edge that has the same shape as the oval depression 48, as recited in claim 1.

For at least these reasons, Fuerschbach does not anticipate claims 1-7 and 13 because Fuerschbach does not disclose all of the features of claim 1. Reconsideration and withdrawal of this rejection is respectfully requested.

Rejection under 35 U.S.C. § 103

Claims 8-12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fuerschbach in view of U.S. Patent No. 5,931,219 to Kull *et al.* (hereafter “Kull”). This

rejection is respectfully traversed. Kull fails to remedy the deficiencies of Fuerschbach discussed above in regard to independent claim 1, from which claims 8-12 depend. Reconsideration and withdrawal of this rejection is respectfully requested.

Conclusion

Applicant submits that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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